

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Case No. 19-cr-0250 (WMW/ECW)

Plaintiff,

ORDER

v.

Johnnie Lamar Haynes (1),

Defendant.

This matter is before the Court on Plaintiff United States of America's motion to narrow the indictment. (Dkt. 199.) The United States seeks to remove the words "model Security-9" from Count 1 of the indictment. Haynes opposes the motion. For the reasons addressed below, the motion is granted.

"A court may ignore independent and unnecessary allegations in an indictment." *United States v. McIntosh*, 23 F.3d 1454, 1457 (8th Cir. 1994) (citing *United States v. Miller*, 471 U.S. 130, 144 (1985)). "Allegations in the indictment that are not necessary to establish a violation of a statute are surplusage and may be disregarded if the remaining allegations are sufficient to charge a crime." *Id.* An allegation may be stricken from an indictment if "nothing is added to the indictment, and the remaining allegations state the essential elements of an offense." *United States v. Nabors*, 762 F.2d 642, 647 (8th Cir. 1985).

As relevant here, Count 1 of the indictment charges Haynes with being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g). Section 922(g) provides that a

person who has been convicted of a crime punishable by imprisonment for a term exceeding one year shall not “possess in or affecting commerce, any firearm.” Section 922(g) does not prohibit felons from possessing a *specific type* of firearm, rather it prohibits felons from possessing *any* firearm. Accordingly, the words “model Security-9” may be removed from the indictment because the remaining allegations in the indictment are sufficient to charge the essential elements of a crime. *See McIntosh*, 23 F.3d at 1457 (concluding that references to gun manufacturer and model were “surplusage” in indictment alleging violation of 18 U.S.C. § 924(c)).

Therefore, the United States’s motion to narrow the indictment is granted, and the words “model Security-9” are stricken from the indictment.

ORDER

Based on the foregoing analysis and all the files, records and proceedings herein, **IT IS HEREBY ORDERED** that Plaintiff United States of America’s motion to narrow the indictment, (Dkt. 199), is **GRANTED**.

Dated: July 28, 2021

s/Wilhelmina M. Wright
Wilhelmina M. Wright
United States District Judge